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ORIGINAL: ENGLISH

COMMISSION ON THE STATUS OF WOMEN
Working Group on the Elaboration
of a Draft Optional Protocol to
the Convention on the Elimination
of All Forms of Discrimination
against Women

Note by the Secretariat

The Chairperson of the Open-ended Working Group of the Commission on the Status of Women on the Elaboration of a Draft Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women has prepared the text contained in the annex to the present note, which is based on proposals made by members of the Open-ended Working Group at its first session (11-22 March 1996), on views submitted by Governments and intergovernmental and non-governmental organizations (see E/CN.6/1996/10 and Corr.1 and Add.1 and 2 and E/CN.6/1997/5), and on the elements suggested by the Committee on the Elimination of Discrimination against Women contained in suggestion No. 7 (see A/50/38).

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Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to this Protocol,

Reaffirming their determination to ensure the full and equal enjoyment by women and the girl child of all human rights and fundamental freedoms and to take effective action against violations of these rights and freedoms,

Recalling the Convention on the Elimination of All Forms of Discrimination against Women in which States parties agreed to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Have agreed as follows:

Article 1

1. [a] A State[b] Party to the Convention on the Elimination of All Forms of Discrimination against Women that becomes a Party to the present Protocol recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive and examine communications.

[a]"A State party to the Convention that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by a State party of any of the rights set forth in the Convention." (E/CN.6/1997/5)

[b]"which has signed and ratified the optional protocol" (E/CN.6/1996/10)

2. No communication shall be received by the Committee if it concerns a State party to the Convention which is not a party to this Protocol.

Article 2

1. [a] Communications may be submitted

(a) By an individual, group or organization[b] claiming to have suffered from a violation of any of the rights in the Convention or claiming to be directly affected by the[c] failure[d] of a State party to comply with its obligations[e] under the Convention; or

[a]"Individuals who claim that any of their rights enumerated in the Convention have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration." (E/CN.6/1997/5)

[b]"groups or organizations with specific interest in women" "groups of persons" or "groups of individuals" "groups acting on behalf of individuals" "non-governmental organizations" (E/1996/26, annex III)

[c]"alleged failure to provide effective remedies to situations caused by violations of rights under the Convention" (E/1996/26, annex III)

[d]"deliberate, widespread or systematic" (E/1996/26, annex III)

[e]or facing a "threat of violations or infringements of rights" (E/1996/26, annex III)

(b) By an individual, group or organization[f] claiming that a State party has violated any of the rights set forth in the Convention or has[g] failed[h] to comply with its obligations[i] under the Convention, if in the opinion of the Committee this person, group or organization[f] has sufficient interest in the matter.

[f]"groups or organizations with specific interest in women" "groups of persons" or "groups of individuals" "groups acting on behalf of individuals" "non-governmental organizations" (E/1996/26, annex III)

[g]"allegedly failed to provide effective remedies to situations caused by violations of rights under the Convention" (E/1996/26, annex III)·

[h]"deliberately or systematically" (E/1996/26, annex III)

[i]or is posing a "threat of violations or infringements of rights" (E/1996/26, annex III)

Article 3

1. Communications shall be in writing and shall not be anonymous.

Article 4

1. [a] The Committee shall declare a communication inadmissible which it considers to be an abuse of the right of submission of such communication or to be incompatible with the provisions of the Convention.

[a]"The communications procedure should not be applied in such a way as authorizing anyone to make unfounded accusations against a State party or distorted facts." (E/CN.6/1997/5)

2. The Committee shall not declare a communication admissible unless it has ascertained:

(a) That all available domestic remedies have been exhausted, unless it considers this requirement unreasonable;[b] and

[b]delete "unless it considers this requirement unreasonable" (E/CN.6/1997/5)

(b) That the same matter[c/d] is not being examined under another procedure of international investigation or settlement, unless that procedure is unreasonably prolonged.[c]

[c]"has not been, and is not being, examined by another treaty body" (E/1996/26, annex III)

[d]"that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement." (E/CN.6/1997/5)

[c]delete "unless that procedure is unreasonably prolonged" (E/CN.6/1997/5)

add:

"(c) that it should be in compliance with the principles of objectivity and impartiality and should include information of legal remedies or reparation undertaken by the respective State party." (E/CN.6/1997/5)

Article 5

1. At any time after the receipt of a communication, and before a determination on the merits has been reached, the Committee may request the State party concerned to take interim measures as may be necessary to preserve the status quo or to avoid irreparable harm.

[a]"recommend" (E/CN.6/1997/5)

2. The State party concerned shall comply with a request made by the Committee under paragraph 1.

Article 6

1. [a] Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under this Protocol confidentially to the attention of the State party concerned, but the identity of the author shall not be revealed without the latter's express consent.

[a]"The State party would be informed confidentially of the communication. The author's identity would also be revealed to the State party." (E/CN.6/1997/5)

2. Within [three/six] months, the receiving State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State party.

3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect for the rights and obligations set forth in the Convention.

Article 7

1. [a] The Committee shall consider communications received under this protocol in the light of all information made available to it by or on behalf of the author and by the State party concerned. The Committee may also take into account information obtained from other sources, provided that this information is transmitted to the author and the State party for comment.

[a]"The Committee shall consider communications received under the present protocol in light of all written information made available to it by the individual and by the State party concerned." (E/CN.6/1997/5)

2. The Committee shall hold closed meetings when examining communications under this Protocol.

3. After examining a communication, the Committee shall adopt its views on the communication and shall transmit these to the State party and to the author together with any recommendations.

Article 8

1. The Committee may request from the State party concerned specific measures to remedy any violation or failure to give effect to its obligations under the Convention.

2. The State party shall take all steps necessary to remedy any violation of rights or failure to give effect to its obligations under the Convention. The State party shall ensure that[a] appropriate remedy including, if need be, adequate reparation is provided.

[a]"relevant, proportional measures" (E/CN.6/1997/5)

3. Within [three/six] months, the receiving State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy that has been taken by the State party.

Article 9

1. [a] The Committee may invite a State party concerned to discuss with it the measures which that State party has taken[b] to give effect to the views, suggestions or recommendations of the Committee.

[a]"The Committee shall forward its views to the State party concerned and to the individual." (E/CN.6/1997/5)

[b]"concerning implementation of such measures" (E/1996/26, annex III)

2. The Committee may invite the State party concerned to include in its report under Article 18 of the Convention details of any measures taken in response to the Committee's views, suggestions and recommendations.

Article 10

1. If the Committee receives reliable information indicating a serious or systematic violation by a State party to the protocol of rights set forth in the Convention or of a failure to give effect to obligations set forth in the Convention, the Committee shall invite that State party to cooperate in the examination of the information to this end and to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State party concerned together with any comments and recommendations.

4. The State party shall, within [three/six] months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry would be conducted confidentially and the cooperation of the State party shall be sought at all stages of the proceedings.

Article 11

1. The Committee may at any time invite a State party concerned to discuss with it the measures which that State party has taken in response to such an inquiry.

2. The Committee may invite the State party concerned to include in its report under Article 18 of the Convention details of any measures taken in response to such an inquiry.

Article 12

1. The State parties to this Protocol undertake:

(a) Not to hinder in any way the effective exercise of the right to communications established in this protocol;

(b) To take all steps necessary to prevent any individual, group or organization from interfering with the exercise of the right of communication or victimizing any individual for exercising this right or providing information to or assisting the Committee in its inquiries;

(c) To assist the Committee in its proceedings under this Protocol.

Article 13

1. The Committee shall include in its annual report under Article 21 of the Convention a summary of its activities under this Protocol.

Article 14[a]

States parties undertake[b] to publicize:

(a) The contents of this Protocol and the procedures established under it;

(b) The Committee's views, comments, suggestions and recommendations concerning a communication received or an inquiry conducted.

[a]"The communication and inquiry procedure should be made public as widely as possible" (E/1996/26, annex III)

[b]"to make the provisions of the optional protocol widely known in their countries" (E/1996/26, annex III)

Article 15

1. The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by this Protocol.

Article 16

1. The Committee shall meet for such a period as is necessary to carry out its function under this Protocol.

Article 17

1. This Protocol is open for signature by any State which has signed the Convention.

2. This Protocol is subject to ratification by any State which has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 18

1. This Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the [fifth/tenth] instrument of ratification or accession.

2. For each State ratifying this Protocol or acceding to it after its entry into force, this Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 19

1. The provisions of this Protocol shall extend to all parts of federal States and to all territories subject to the jurisdiction of a State party without any limitations or exceptions.

Article 20

1. No reservations to this Protocol shall be permitted.

Article 21

1. Any State Party to the present Protocol may propose any amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to this Protocol with a request that they notify her/him whether they favour a conference of States parties for the purpose of considering and voting on the proposal. In the event that at least one third of the State parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States parties to this Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States parties which have accepted them, other States parties still being bound by the provisions of this Protocol and any earlier amendments which they have accepted.

Article 22

1. Any State party can denounce this Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect [three/six] months after the date of receipt of the notification by the Secretary-General.

2. Denunciations shall be without prejudice to the continued application of the provisions of this Protocol to any communication or inquiry before the effective date of denunciation.

Article 23

The Secretary-General of the United Nations shall inform all States of:

(a) Signatures, ratifications and accessions under this Protocol;

(b) The date of entry into force of this Protocol and the date of entry into force of any amendment under article 20 and any denunciations under article 21.

Article 24

1. This Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Protocol to all States referred to in article 25 of the Convention.

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COMMISSION ON THE STATUS OF WOMEN
Open-ended Working Group on the
Elaboration of a Draft Optional
Protocol to the Convention on the
Elimination of All Forms of
Discrimination against Women
10-21 March 1997
Agenda item 5

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, INCLUDING THE ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION

Draft report of the Open-ended Working Group (Part I)

Chairperson: Ms. Aloisia WÖRGETTER (Austria)

1. In accordance with Economic and Social Council resolution 1995/29 of 24 July 1995, the Open-ended Working Group on the Elaboration of a Draft Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women met as an in-session open-ended working group of the Commission at its fortieth session. By decision 1996/240 of 22 July 1996, the Council renewed the mandate of the Working Group so that it might continue its work, and authorized it to meet in parallel with the Commission at its forty-first session.

2. Ms. Aloisia Wörgetter (Austria) continued as Chairperson of the Working Group.

3. The Working Group met from 10 to 20 March 1997. It held __ meetings (1st to __) and a number of informal meetings. It had before it the following documents:

(a) Report of the Secretary-General on a comparative summary of existing communications and inquiry procedures and practices under international human rights instruments and under the Charter of the United Nations (E/CN.6/1997/4);

(b) Report of the Secretary-General containing the additional views of Governments, intergovernmental organizations and non-governmental organizations on an optional protocol to the Convention (E/CN.6/1997/5);

(c) Note by the Secretariat containing a compilation text prepared by the Chairperson, based on proposals made by members of the Open-ended Working Group at its first session, on views submitted by Governments and intergovernmental and non-governmental organizations, and on elements suggested by the Committee on the Elimination of Discrimination against Women (E/CN.6/1997/WG/L.1).

4. The Chairperson opened the meeting and made a statement.

5. At the 1st meeting, on 10 March, the Special Adviser on Gender Issues and Advancement of Women, made an introductory statement.

6. At the same meeting, the representative of the Committee on the Elimination of Discrimination against Women made a statement in her capacity as a resource person, in accordance with Economic and Social Council decision 1996/240.

General exchange of views

7. At its 1st and 2nd meetings, on 10 and 11 March, the Working Group, at the invitation of the Chairperson, held a general exchange of views on item 5. Delegations welcomed the text prepared by the Chairperson (E/CN.6/1997/WG/L.1), which was based on the elements suggested by the Committee on the Elimination of Discrimination against Women in suggestion No. 7 (A/50/38), on proposals made by members of the open-ended Working Group at its first session (E/1996/26, annex III) and on views expressed by Governments, intergovernmental organizations and non-governmental organizations (E/CN.6/1996/10 and Corr.1 and Add.1 and 2 and E/CN.6/1997/5). The Working Group agreed that this text should be used as basis for the further deliberations in the Working Group and for the process of drafting an optional protocol.

8. It was suggested that a first reading of the Chairperson's text be completed at the current session of the Commission, with a view to finalizing an optional protocol as quickly as possible. The aim of achieving the protocol's entry into force before the year 2000 was put forward. It was also suggested that the Working Group should proceed without a specific timetable.

9. Delegations pointed out that an optional protocol would be an essential step in the follow-up to the World Conference on Human Rights and the Fourth World Conference on Women. It would strengthen the implementation of the legal rights of women contained in the Convention on the Elimination of All Forms of Discrimination against Women, and make the Convention more effective in promoting and protecting these rights. An optional protocol would complement and strengthen the existing implementation mechanism under the Convention, that is, the reporting procedure under article 18. An optional protocol, which should allow for complaints about general and specific violations of the rights of women, would place the Convention on an equal footing with other international human rights treaties having communications procedures. The

optional protocol should be consistent with, and complementary to, similar existing mechanisms, and these should be drawn upon in its elaboration.

10. Delegations emphasized that any possible duplication or overlapping with similar existing procedures should be avoided. It was noted that the achievement of the universal ratification of the Convention, its effective implementation, and the withdrawal of reservations by States parties remained important goals to be achieved. The need to improve the effectiveness of the existing monitoring mechanism, as well as to ensure the efficiency of any new mechanism, was noted.

11. In preparing an optional protocol, a number of issues would need to be resolved. The breadth of the articles contained in the Convention, covering political, civil, economic, social and cultural rights, and the influence of social attitudes and practices on women's de facto enjoyment of their rights, would need to be kept in mind. It was also noted that the Working Group should proceed in a way that would lead to a strong instrument that was acceptable to many States parties to the Convention and that could be enforced effectively.

12. Questions were raised with respect to the appropriateness of the proposed inquiry procedure in the light of the goals of the Convention.